



ARKANSAS JUDICIARY

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## Rule 25. Substitution Of Parties.

(a) Death. (1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party, and such substitution may be ordered without notice or upon such notice as the Court may require. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record by the service upon the parties of a statement of the fact of death, the action may be dismissed as to the deceased party.

(2) Upon the death of a plaintiff the proper party for substitution shall be his personal representative or, where the claim has passed to his heirs or to his devisees, the heirs or devisees may be substituted for the deceased party. Upon the death of a defendant in an action wherein the claim survives against his personal representative, the personal representative shall be the proper party for substitution. Except in an action for the recovery of real property only, or for the adjudication of an interest therein, the heirs, devisees or personal representative may be the proper parties for substitution as the Court may determine. Where the deceased party is acting in the capacity as personal representative, his successor shall be the proper party for substitution.

(3) Upon the death of any party the Court before which such litigation is pending may, upon the motion of any party, appoint a special administrator who shall be substituted for the deceased party. The powers of such special administrator shall extend only to the prosecution and defense of the litigation wherein he is appointed. No special administrator shall be appointed where there is a general personal representative subject to the jurisdiction of the Court for the deceased party. Where such a general personal representative qualifies after the appointment of a special administrator, the general personal representative shall, upon the motion of any party, or the general personal representative, be substituted for such special administrator. Costs taxed against a special administrator shall not constitute a personal obligation.

(4) In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Guardians. If a plenary, limited or temporary guardian is appointed for a party, the court shall upon such terms as it considers just and upon motion of a party or the guardian allow the guardian to be substituted to the extent of his judiciary capacity, for the party for whom the guardian has been appointed.

(c) Transfer of Interest. In the case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of

this motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office. (1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of the substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the Court may require his name to be added.

(e) Limitation of Rule. The provisions of this rule shall in no way allow a claim to be maintained which is otherwise barred by limitations or non-claim, nor shall the provisions of this rule be determinative of whether or not a claim for or against a deceased party survives his death.

Reporter's Notes to Rule 25: - 1. Section (a)(1) is modified from FRCP 25(a) so as to allow, with or without notice, the substitution of parties in the event of the death of a party. This change is predicated upon the assumption that the trial court can best determine whether the substitution is essentially a routine clerical matter or whether it should be allowed only after a hearing. This section is further modified from the Federal Rule by changing the word "may" for "shall" in the last sentence so as to afford the trial court some discretion in deciding whether to dismiss an action.

2. Section (a)(2) represents an attempt to identify the proper parties for substitution on the death of a party and to condense superseded Ark. Stat. Ann. 27-1003, 27-1012, 27-1013 and 27-1014 (Repl. 1962). The purpose of this rule is to permit the action to be prosecuted by or against those who are, following the death of a party, either the real party in interest or representative thereof.

3. Section (a)(3) empowers the trial court to appoint a special administrator for a deceased party in litigation pending before it. This basically tracks the provisions contained in superseded Ark. Stat. Ann. 27-1009 through 27-1011 (Repl. 1962).

4. Section (e) represents an attempt to limit the effect of this rule to the determination of who may be substituted and not to enlarge the time during which a claim may be prosecuted. Neither does it determine which claims survive the death of a party. Specifically, Ark. Stat. Ann. 27-901 through 27-910 (Repl. 1962), remain unaffected by Rule 25.

Additions to Reporter's Notes, 1984 Amendments: - Rule 25(b) is amended to make it compatible with the Limited Guardianship Act and Rule 4(d)(1) and (3). The purpose of providing for substitution of a guardian only "to the extent of his judiciary capacity" is to permit the individual to remain a party in cases in which issues in excess of the guardian's capacity are to be decided.

### **History Text:**

History. Amended July 9, 1984, effective September 1, 1984

### **Associated Court Rules:**

Rules of Civil Procedure

**Group Title:**IV. Parties

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